

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs March 27, 2007

**STATE OF TENNESSEE v. VERESIA R. GREEN**

**Direct Appeal from the Circuit Court for Blount County**  
**No. C-15678 D. Kelly Thomas, Jr., Judge**

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**No. E2006-01454-CCA-R3-CD - Filed April 27, 2007**

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The Defendant, Veresia R. Green, pled guilty to one count of child neglect, a Class A misdemeanor, and was sentenced to a probated sentence. The Defendant's probation was twice revoked, and she was ordered to serve 120 days in jail, to complete a treatment program, and to serve an extended period of probation. The Defendant appeals this judgment, contending that the trial court erred when it revoked her probation and ordered her to serve an additional 120 days in confinement. Concluding there exists no error, we affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which JAMES CURWOOD WITT and J.C. McLIN, JJ., joined.

Mack Garner (at hearing) and J. Liddell Kirk (on appeal), Knoxville, Tennessee, for the appellant, Veresia R. Green.

Robert E. Cooper, Jr., Attorney General and Reporter; Jennifer L. Bledsoe, Assistant Attorney General; Michael L. Flynn, District Attorney General; Victoria Bannacvi, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

**I. Facts**

This case arises from the revocation of the Defendant's probation. On May 12, 2005, the Defendant pled guilty to one count of child neglect, a Class A misdemeanor. The Defendant was sentenced to eleven months and twenty-nine days, all but thirty days of which was suspended in lieu of supervised probation. On July 19, 2005, the State filed a motion to revoke the Defendant's probation, alleging that the Defendant had violated her probation by testing positive for cocaine, THC, amphetamines, and methamphetamine. The Defendant's probation was revoked, and a supplemental probation order mandated, among other things, that the Defendant serve 120 days in jail and that, upon release, she shall report to supervised probation for the balance of her eleven

months and twenty-nine day sentence. In addition, as a condition of probation the Defendant was to enter and complete a licensed outpatient program.

On April 23, 2006, an arrest warrant alleging simple possession of a Schedule II and a Schedule IV narcotic, Valium and Morphine respectively, was issued for the Defendant. A probation violation warrant was issued for the Defendant for violating her probation by being arrested for simple possession of a Schedule II and IV narcotic, failing to report the arrests, possessing narcotic drugs, and failing to pay court costs.

At the hearing on the probation violation warrant, the following evidence was presented: Terry Fowlkes, the Defendant's probation and parole officer, testified that she began supervising the Defendant on December 1, 2005, after the Defendant served 190 days. Fowlkes obtained a probation violation warrant against the Defendant on May 1, 2006, after she learned that she had two new arrests, simple possession of a schedule II and IV narcotic, on April 23, 2006, and she had not reported those arrests. On cross-examination, Fowlkes testified that the Defendant was required to report to her once a month, and she did so in every month except February. In February, she was receiving treatment to adjust her medication. Fowlkes agreed that the Defendant was on "significant medication." Fowlkes never gave the Defendant a drug screen because at the time of her supervision of her she was receiving outpatient treatment that involved drug screens, none of which came back positive. The Defendant graduated from this outpatient program on April 20, 2006. Fowlkes understood that the Defendant was attempting to regain custody of her minor child. Fowlkes testified that she had not spoken with the Defendant about her most recent arrests. On redirect examination, Fowlkes testified that three days after the Defendant graduated from an alcohol and drug treatment program she was arrested for these possession charges.

The Defendant testified that she has three grown children and one eight-year-old daughter. Her daughter is under the care of one of her son's mother and father-in-law, and she is happy with that situation. The Defendant said that she served 120 days originally on this charge and was released on November 25. When she was released in November, she was not working and was living on government assistance. The Defendant said that she is on medications for anxiety and depression and that she missed her February probation meeting because she was in an inpatient treatment program. After completing the inpatient program, the Defendant participated in an outpatient treatment program that she also successfully completed.

The Defendant explained her arrests as follows: she had been sick the whole weekend, and she did not realize that her license was suspended. She asked a friend of hers to take her to get something to eat, and they left in the Defendant's car. Her friend wanted her to purchase some illegal drugs for him, but she initially did not want to buy them. She determined she would obtain the drugs, but her friend was pulled over while she was inside a house planning to buy the drugs. She saw the police, decided not to buy the drugs, came out of the house, and was arrested. The Defendant said that the medications that she had on her at the time were her friend's medications, not hers. She said that he put the medications into her purse. The Defendant asked the court to permit her to go to a halfway house for a structured environment.

On cross-examination, the Defendant agreed that she did not turn herself in when she learned that there was a probation violation warrant for her arrest.

Based upon this evidence, the trial court found:

Well, the proof is plain that [the Defendant] violated her probation by being arrested and not reporting it. And in deciding whether or not she is likely to do well on probation, there are a couple of disturbing things. Number one, after she had completed this drug treatment that she's supposed to get credit for – and, I mean, she's entitled to some, but not a whole lot, because after – in spite of that, [she] decided to go with a friend over to Alcoa to buy some illegal drugs, which is not good. And the other thing is, when she got a hint that her probation had been revoked, she just quit reporting and didn't turn herself in or anything else. So, all of those are indications that she is very resistant to following rules when it doesn't suit her purposes.

So, she will serve an additional 120 days in the jail. Her release back to probation will be contingent. She will be required to go to the Lakeway House of Hope for the balance of her probation, which will be extended until the 1st of March of '07. So, she will do 90 days and she's already done – well, she's got 30 days credit against that 90 . . . .

It is from this order that the Defendant now appeals.

## **II. Analysis**

On appeal, the Defendant contends that the evidence was not sufficient to support the trial court's decision to impose an additional 120 days of jail time. She asserts that she complied with many of the probation requirements, including successfully completing a drug treatment program, and that the subject of her new charges was not her own unlawful drug use but her association with and assistance to another individual who sought the unlawful use of drugs.

When a trial court determines by a preponderance of the evidence that a probationer has violated the conditions of his or her probation, the trial court has the authority to revoke probation. T.C.A. § 40-35-311(e) (2006). Upon finding that the defendant has violated the conditions of probation, the trial court may revoke the probation and either: (1) order incarceration; (2) order the original probationary period to commence anew; or (3) extend the remaining probationary period for up to two additional years. State v. Hunter, 1 S.W.3d 643, 644 (Tenn. 1999); see T.C.A. § 40-35-310 (2006); T.C.A. § 40-35-311(e) (2006); T.C.A. § 40-35-308(c) (2006). The defendant has the right to appeal the revocation of his probation and entry of his original sentence. T.C.A. § 40-35-311(e). Upon a finding of a violation, the trial court is vested with the statutory authority to “revoke the probation and suspension of sentence and cause the defendant to commence the execution of the judgment as originally entered . . . .” T.C.A. § 40-35-311(e); Hunter, 1 S.W.3d at 646 (holding that

the trial court retains the discretionary authority to order the defendant to serve his or her original sentence in confinement). Furthermore, when probation is revoked, “the original judgment so rendered by the trial judge shall be in full force and effect from the date of the revocation of such suspension . . . .” T.C.A. § 40-35-310. The trial judge retains the discretionary authority to order the defendant to serve the original sentence. See State v. Duke, 902 S.W.2d 424, 427 (Tenn. Crim. App. 1995).

The decision to revoke probation is in the sound discretion of the trial judge. State v. Kendrick, 178 S.W.3d 734, 738 (Tenn. Crim. App. 2005); State v. Mitchell, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991). The judgment of the trial court to revoke probation will be upheld on appeal unless there has been an abuse of discretion. State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991). To find an abuse of discretion in a probation revocation case, the record must be void of any substantial evidence that would support the trial court's decision that a violation of the conditions of probation occurred. Id.; State v. Grear, 568 S.W.2d 285, 286 (Tenn. 1978); State v. Delp, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980). Proof of a probation violation is sufficient if it allows the trial court to make a conscientious and intelligent judgment. State v. Milton, 673 S.W.2d 555, 557 (Tenn. Crim. App. 1984). In reviewing the trial court’s finding to revoke probation, it is our obligation to examine the record and determine whether the trial court has exercised a conscientious judgment rather than an arbitrary one. Mitchell, 810 S.W.2d at 735. In our view, after exercising a conscientious judgment as to whether or not a Defendant has violated the terms of a probated sentence, the trial court must also exercise a conscientious rather than arbitrary judgment as to an appropriate disposition. State v. Steven Kelly Frazee, No. M2005-01213-CCA-R3-CD, 2006 WL 618300, at \*9 (Tenn. Crim. App., at Nashville, Mar. 13, 2006), *perm. app. denied*.

We conclude that the trial court did not abuse its discretion in this case. The record proves that the Defendant had previously violated her probation by testing positive for cocaine, among other drugs. On this occasion, she admitted that she went to purchase fifteen dollars worth of crack cocaine for a male friend who was driving her car. While she was inside the house to purchase the cocaine, but before she in fact purchased it, she looked outside and saw that her car was surrounded by police cars. She went out of the house and was arrested. A search incident to this arrest revealed that she was carrying in her purse an ibuprofen bottle that contained a Schedule II and a Schedule IV narcotic. The Defendant denied that these drugs were hers, telling the court that they belonged to her friend and that he had placed them in her purse. We conclude that, based upon the evidence presented, the trial court exercised a conscientious judgment rather than an arbitrary one when it revoked the Defendant’s probation and when it ordered her to serve an additional 120 days in jail. Therefore, the Defendant is not entitled to relief on this issue.

### **III. Conclusion**

We agree with the judgment of the trial court. Accordingly, we affirm the revocation of the Defendant’s probation and the trial court’s order requiring the Defendant to serve 120 days of her sentence.

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ROBERT W. WEDEMEYER, JUDGE